

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7270

Joint Petition of Verizon New England )  
Inc.,d/b/a Verizon Vermont, Certain Affiliates )  
Thereof, and FairPoint Communications, Inc. )  
for approval of an asset transfer, acquisition of )  
control by merger and associated transactions )

Order entered: 3/28/2007

**ORDER RE: MOTIONS TO INTERVENE AND NOTICES OF APPEARANCE**

This proceeding concerns a proposed asset transfer from Verizon New England, Inc., d/b/a Verizon Vermont ("Verizon") to Fairpoint Communications, Inc. ("Fairpoint"). The parties here seek approval from the Vermont Public Service Board ("Board") for that transfer. A prehearing conference was held on February 23, 2007. An order was issued on March 9, 2007 establishing, among other things, deadlines for intervention. Numerous intervention motions were filed.

In this Order, the Vermont Public Service Board ("Board") grants permissive intervention for the "Labor Intervenors,"<sup>1</sup> Vermont Electric Cooperative, Inc. ("VEC"), the Eight Independent Telephone Companies ("Eight Independents"),<sup>2</sup> One Communications Corp. ("One Communications"), New England Cable and Telecommunications, Inc. ("NECTA") and Comcast Phone of Vermont, LLC. ("Comcast Phone") (hereafter collectively referred to as

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1. The Labor Intervenors are the Communications Workers of America, International Brotherhood of Electrical Workers ("IBEW") Locals 2320, 2326, and 2327 and IBEW System Council T-6. We refer to them here as the "Labor Intervenors" because they so refer to themselves.

2. The eight independent Vermont telephone companies are: Shoreham Telephone Company, Inc.; Topsham Telephone Company, Inc.; Waitsfield-Fayston Telephone Company, Inc., d/b/a Waitsfield Telecom and d/b/a Champlain Valley Telecom; Northfield Telephone Company; Perkinsville Telephone Company; Ludlow Telephone Company; Franklin Telephone Company; and Vermont Telephone Company, Inc., d/b/a VTel.

"NECTA/Comcast"), Level 3 Communications, LLC. ("Level 3"), segTEL, Inc. ("segTEL")<sup>3</sup> and Sovernet, Inc. ("Sovernet").

On March 9, 2007, the Department of Public Service ("Department") filed a response to the Motions to Intervene by the Labor Intervenors, VEC, the Eight Independents, One Communications, and NECTA/Comcast. In summary, the Department recommended that each party should be granted intervention on a permissive basis, and subject to specific limitations. No other responses were filed.

#### Standard for Review

The Board's Rules on intervention provide for intervention as of right when, upon timely motion,

the applicant demonstrates a substantial interest which may be adversely affected by the outcome of the proceeding, where the proceeding affords the exclusive means by which the applicant can protect that interest and where the applicant's interest is not adequately represented by existing parties.<sup>4</sup>

The Board's Rules also allow permissive intervention, in the discretion of the Board, when, upon timely application,

the applicant demonstrates a substantial interest which may be affected by the outcome of the proceeding. In exercising its discretion in this paragraph, the Board shall consider (1) whether the applicant's interest will be adequately protected by other parties; (2) whether alternative means exist by which the applicant's interest can be protected; and (3) whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.<sup>5</sup>

For the reasons set forth below, the Board grants each of the Motions to Intervene on a permissive basis and limit each party's participation to the specific issues identified in its respective motion. We do not accept the Department's recommendation to further limit any party's participation. Under our rules, the Department may raise relevance objections at any time; and the Board will address such objections on a case-by-case basis.

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3. "segTEL" appears to be this company's preferred capitalization of its name.

4. Board Rule 2.209(A)(3).

5. Board Rule 2.209(B).

Labor Intervenors

The Labor Intervenors do not specify whether they seek intervention as of right or permissive intervention. In their motion, the Labor Intervenors declare a number of reservations with respect to FairPoint's financial and managerial fitness, its ability to maintain service quality and expand broadband services. They also express concerns about whether FairPoint proposes a reasonable division of Verizon's assets and businesses between regulated and unregulated subsidiaries and whether the filed agreement is the entire agreement between the merging parties.

The Labor Intervenors assert that they will be directly and adversely affected by the proposed transaction. They intend to seek discovery on and may present testimony on the following issues:

1. Financial fitness of Fairpoint;
2. Managerial fitness of Fairpoint;
3. Fairpoint's ability to maintain and improve service quality;
4. Fairpoint's ability to maintain, enhance and expand Broadband services;
5. Fairpoint's commitments to Verizon's employees, particularly after the current collective bargaining agreement expires in 2008;
6. Whether Fairpoint intends to outsource any work-related functions currently performed by the Labor Intervenors;
7. Whether the proposed transaction would affect the pensions and other current and post-retirement benefits provided by Verizon to the Labor Intervenors;
8. Whether Fairpoint proposes a reasonable division of Verizon's assets and businesses between regulated and unregulated subsidiaries; and
9. Such other matters that may affect the interests of the Labor Intervenors.

The Department supports the Labor Intervenors' motion, but only if granted permissively under PSB Rule 2.209(B). The Department also recommends that the Board limit, pursuant to PSB Rule 2.209(C.), the Labor Intervenors' participation to matters that affect Verizon's union represented workforce. Specifically, the Department recommends that the Labor Intervenors' participation be limited to issues concerning Fairpoint's commitments to Verizon's workforce, whether job functions would be outsourced, the effect the proposed transactions on pensions and

other current and post-retirement benefits of union members, financial and managerial competency; and such other matters that will or may affect the interests of union-represented employees.

The Labor Intervenors have demonstrated that their interests may be affected by the proposed transactions and that no other party can adequately protect its interests. Accordingly, the Board grants permissive intervention, pursuant to PSB Rule 2.209(B). The Labor Intervenors' participation shall be generally limited to matters pertaining to whether the proposed transaction has any material bearing on their relationship with the surviving corporation, and to those issues identified in their motion.

Vermont Electric Cooperative

Vermont Electric Cooperative, Inc. ("VEC") and Verizon are parties to a Joint Ownership Agreement ("Agreement") which governs the rights and duties of the two companies with respect to poles and other jointly owned equipment. Under the Agreement, according to VEC, Verizon is obligated to provide certain services, including the removal of 1,500 poles in VEC's service territory. Verizon has not performed these services. Additionally, VEC states that Verizon has not paid VEC for tree trimming services in areas where the two companies jointly own poles.

Due to Verizon's outstanding obligations, VEC seeks to protect its pecuniary interests and to determine whether Fairpoint will assume Verizon's obligations under the Agreement and a separate Inter-company Operating Procedure Manual. According to VEC, this proceeding is the only means by which VEC can protect its interest. VEC also states that no other party can adequately protect its interests. Therefore, VEC asks the Board to grant its Motion to Intervene, pursuant to PSB Rule 2.209(A). Alternatively, VEC requests approval to intervene, pursuant to PSB Rule 2.209(B).

The Department supports VEC's Motion to Intervene on a permissive basis, but recommends that its participation be limited to the two issues identified in VEC's motion.

VEC has demonstrated that its interests may be affected by the proposed transaction and that no other party can adequately represent it in this proceeding. Accordingly, the Board grants permissive intervention, pursuant to PSB Rule 2.209(B). VEC's participation shall be limited to the interests described in its motion: (a.) whether Verizon's obligations to VEC are understood

by Fairpoint and will be assumed; and (b.) whether Verizon's unperformed obligations will be adequately satisfied and that any past due amounts will be paid prior to Verizon's exit from Vermont.

### Eight Independents

Verizon was designated by the Board as an Eligible Telecommunication Carrier ("ETC") in 2002.<sup>6</sup> As a part of the proposed Merger transactions, the Joint Petitioners request that the Board also designate Fairpoint as an ETC.<sup>7</sup>

On March 2, 2007, the Eight Independents filed an amended Motion to Intervene as of right, or in the alternative, for permissive intervention. The Eight Independents state that as ETCs in their respective service territories, they have a substantial interest in the outcome of this proceeding because the standards and procedures for designating ETCs and for certifying an ETC's compliance with the Federal Universal Service Fund requirements may be affected. Additionally, the Eight Independents note that they currently have infrastructure sharing arrangements with Verizon. As such, the Eight Independents claim a substantial interest in ensuring that these arrangements are not adversely affected.

The Department supports the Eight Independents' request to participate on a permissive basis, but recommends that their participation be limited to the issues identified in their motion.

The Eight Independents have demonstrated that the outcome of this proceeding may affect their interests with respect to infrastructure sharing arrangements and ETC issues. Furthermore, the Eight Independents have shown that no other party could adequately protect their interests in this proceeding. Accordingly, the Board grants permissive intervention to the Eight Independents. The Eight Independents' participation shall be limited to the interests described in their motion: ETC issues and their infrastructure sharing arrangements with Verizon.

### One Communications

One Communications provides competitive local exchange services in Vermont by obtaining unbundled network elements, interconnection, collocation and other wholesale services

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6. Docket No. 5918, Order of 12/5/02.

7. Joint Petition at 7.

pursuant to Verizon's Statement of Generally Available Terms and Conditions ("SGAT") and other tariff services. According to One Communications, the outcome of this proceeding may adversely affect its ability to obtain the above-referenced elements and services and, therefore, affect its ability to provide services to its customers.

The Department supports One Communications' Motion to Intervene on a permissive basis, but recommends that its participation be limited to the issues identified in its motion.

One Communications has demonstrated that the outcome of this proceeding may affect their interests with respect to wholesale services currently provided by Verizon. Accordingly, the Board grants permissive intervention to One Communications. Its participation is limited to the issues identified in its motion: addressing issues related to its ability to obtain from Fairpoint unbundled network elements, interconnection, collocation and other wholesale services that are presently obtained from Verizon.

#### NECTA/Comcast

NECTA is the principal trade association in New England for operators of cable systems. Comcast Phone is a competitive local exchange carrier in Vermont. They move jointly to intervene, asserting interests in existing interconnection agreements with Verizon and more generally as to the terms and conditions of the transfer to FairPoint, including whether Fairpoint is required to assume Verizon's existing obligations as an incumbent local exchange carrier.

The Department supports NECTA/Comcast's Motion to Intervene on a permissive basis, but recommends that it be limited to the specific interests identified in its motion.

NECTA/Comcast have demonstrated that the outcome of this proceeding may affect their interests in providing competitive facilities-based services in the state. Accordingly, the Board grants permissive intervention. Their participation is limited to the specific issues identified in their motion: (a) continued availability and future rates, terms and conditions of unbundled network elements, interconnection, collocation, transport service, access to numbering resources and other wholesale services; (b) Verizon's obligations under its Statement of Generally Available Terms and Conditions and approval under 47 U.S.C. § 271; (c) the effect of the transition agreement between Verizon and FairPoint on NECTA/Comcast; (d) FairPoint's plans for broadband deployment; (e) FairPoint's capability of meeting its pole attachment obligations;

and (f) the terms and conditions of the transfer from Verizon to FairPoint, including the general obligations of a local exchange carrier.

### Level 3

Level 3 offers telecommunication services in Vermont under an interconnection agreement with Verizon. Level 3 seeks to participate for the limited purpose of protecting its interconnection rights and does not oppose approval of the proposed transaction. No party responded to Level 3's Motion to Intervene.

Level 3 has demonstrated that it has a substantial interest that may be affected by the outcome of this proceeding. Accordingly, the Board grants permissive intervention to Level 3. Its participation is limited to protecting its interconnection rights.

### segTEL

A late-filed Motion to Intervene was filed by segTEL on March 19, 2007. segTEL states that it offers competitive local exchange services in Vermont by purchasing unbundled network elements, interconnection, collocation and other wholesale services from Verizon. segTEL asserts that the proposed transactions may adversely affect the rates, terms and conditions and service quality of the above-referenced elements and services. As such, segTEL asserts that its ability to provide services to its customers may be undermined. No party responded to segTEL's motion.

segTEL has demonstrated that the outcome of this proceeding may affect its ability to provide competitive local exchange services. Accordingly, the Board grants permissive intervention to segTEL. Its participation is limited to the specific issues identified in its motion: continued availability of unbundled network elements, interconnection, collocation and other wholesale services.

### Sovernet, Inc.

Sovernet late-filed a Motion to Intervene on March 19, 2007. Sovernet states that it offers competitive local exchange services in Vermont by purchasing unbundled network elements, interconnection, collocation and other wholesale services from Verizon. Sovernet asserts that the proposed transactions may adversely affect the rates, terms and conditions and service quality of the above-referenced elements and services. As such, Sovernet asserts that its

ability to provide services to its customers may be undermined. No party responded to Sovernet's motion.

Sovernet has demonstrated that the outcome of this proceeding may affect its ability to provide competitive local exchange services. Accordingly, the Board grants permissive intervention to Sovernet. Its participation is limited to the specific issues identified in its motion.

Cooperation Among the Parties

The Board encourages similarly situated parties to work cooperatively and eliminate redundancy in testimony, hearings and arguments.

Motion to Waive PSB Rule 2.201 and Notice of Appearance

The following Motions for Leave to Appear *Pro Hac Vice* have been filed:

- (a) Alan D. Mandl, Esq., for NECTA/Comcast;
- (b) Gregory W. Kennan, Esq., and R. Edward Price, Esq., for One Communications;
- (c) Rogelio E. Pena, Esq., and Gregg Strumberger, Esq., for Level 3; and
- (d) Scott Sawyer, Esq., for segTEL and Sovernet.

As no party objected to the motions and notices, we hereby grant them.

SO ORDERED.



Dated at Montpelier, Vermont, this 28th day of March, 2007.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: March 28, 2007

ATTEST: s/Judith C. Whitney  
Deputy Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: [psb.clerk@state.vt.us](mailto:psb.clerk@state.vt.us))*